

In the Matter of)
)
Updating Broadcast Radio Technical Rules) MB Docket No. 21-263
)

Released: February 17, 2022

2497

out in sections 73.207(b) and 74.1235(d), to eliminate conflicting provisions and comply with current treaty requirements.⁸

3. Commenters in this proceeding overwhelmingly supported the proposed changes, with the exception that NAB objects to the proposed elimination of the proximate interference rule set out in section 73.316(d), as discussed below.⁹

III. DISCUSSION

4. As discussed individually below, we adopt all of the proposals set out in the *NPRM* except that we retain the proximate interference rule set out in section 73.316(d).

A. Maximum Rated Transmitter Power for AM Stations

5. We adopt the proposal in the *NPRM* to amend section 73.1665(b) to remove the maximum rated transmitter power¹⁰ limit for AM stations.¹¹ Five commenters support this rule change and no commenters oppose it.¹² We affirm our tentative conclusion that an equipment limitation on transmitter power is outdated and unnecessary given our current reliance on actual operating antenna input power as the most accurate and effective means of ensuring that AM stations adhere to their authorized power limits.¹³ Furthermore, we agree with NAB that elimination of this technical restriction on AM transmitters will allow AM stations of any class to use transmitters of any rated power, thus benefiting the AM service by broadening the market of transmitters available to stations, enhancing the secondary market for AM transmitters, and reducing the number of transmitters that need to be disposed of.¹⁴ Accordingly, we amend section 73.1665(b) by removing the maximum rated transmitter power for AM stations, deleting the “Table 1 to paragraph (b),” and replacing “power rating limit” in the first sentence of section 73.1665(b) with “manufacturer-rated power limit” to indicate that this is a technical specification established by the transmitter manufacturer.

B. NCE FM Community of License Coverage

6. We adopt the proposal in the *NPRM* to eliminate the inconsistency between sections 73.316(c)(2)(ix)(B) and 73.1690(c)(8)(i) and the NCE FM community coverage standard set out in section 73.515 of the rules.¹⁵ Five commenters support this proposal and no commenters oppose it.¹⁶

⁸ 47 CFR §§ 73.207(b); 74.1235(d).

⁹ Five commenters and two reply commenters submitted comments in this proceeding, listed in Appendix A, *infra*. Two commenters suggest rule changes that are outside the scope of this proceeding, as they do not relate to the measures proposed in the *NPRM* and therefore we lack an adequate record regarding these suggested changes. For this reason, we will not consider REC’s proposals that we amend section 73.809(a) to clarify the IF protection requirements for LPFM stations. *See* REC Comments at 2-4. Likewise, we will not consider Schober’s suggestion that we: (1) modify section 73.509(b) to eliminate third-adjacent protections for Class D stations; (2) eliminate sections 73.512(a) and (b); and (3) modify sections 73.506, 73.510, 73.512(d), and 73.558.

¹⁰ The maximum rated carrier power is defined as the “maximum power at which the transmitter can be operated satisfactorily and is determined by the design of the transmitter and the type and number of vacuum tubes or other amplifier devices used in the last radio stage.” 47 CFR § 73.14. The maximum rated power is typically set out by the manufacturer in the transmitter technical specifications.

¹¹ *See NPRM* at 2, para. 3.

¹² *See* Read Comments at 1; Schober Comments at 1; REC Comments at 2; NAB Comments at 2; Cohen, Dippell and Everist Comments at 1; Cohen, Dippell and Everist Reply Comments at 2.

¹³ *See* 47 CFR §§ 73.51; 73.1560(a)(1).

¹⁴ NAB Comments at 2.

¹⁵ *See NPRM* at 2-3, para. 4.

¹⁶ *See* Read Comments at 1; Schober Comments at 1; REC Comments at 2; NAB Comments at 2-3; Cohen, Dippell and Everist Comments at 2; Cohen, Dippell and Everist Reply Comments at 2.

Specifically, sections 73.316(c)(2)(ix)(B) and 73.1690(c)(8)(i) currently state that NCE stations must demonstrate that they cover “at least a portion of the community of license” when submitting certain types of applications.¹⁷ In contrast, section 73.515, which was adopted after sections 73.316(c)(2)(ix)(B) and 73.1690(c)(8)(i), established the current standard, namely, that NCE stations must cover 50% of their community of license or 50% of the population in their community with a 60 dBu signal strength predicted contour. To create consistency and clarity among these rules, we amend sections 73.316(c)(2)(ix)(B) and 73.1690(c)(8)(i) to conform to the updated standard that NCE applicants must show that their predicted 60 dBu contour will cover at least 50% of the relevant community of license or reach 50% of the population within the community.

7. One commenter, Read, supports harmonizing NCE FM community of license coverage requirements; however, he requests the Commission to “provide formal guidance” on the application of the coverage requirement for “NCE stations with smaller signals in larger communities, where the signal cannot possibly meet the standard of 73.515 without causing prohibited contour overlap with nearby facilities.”¹⁸ In response, we observe that the 60 dBu contour-based coverage standard (rather than the 70 dBu contour-based coverage standard used for commercial FM stations¹⁹) already represents a carefully considered balance between “the Commission’s mandate under Section 307(b) of the Act [to ensure service to a community of license] with the service, technical, and financial realities of operating NCE FM stations.”²⁰ This standard is designed to ensure that NCE stations have sufficient flexibility in siting facilities while still reaching their target audiences.²¹ Therefore, other than consistently applying this standard to sections 73.316(c)(2)(ix)(B) and 73.1690(c)(8)(i), we decline to adopt any further substantive modifications to the rule at this time.

C. FM Transmitter Interference to Nearby Antennas

8. In light of industry feedback cautioning that our proposal could undermine the Commission’s “newcomer policy,” we do not adopt the proposal in the *NPRM* to eliminate section 73.316(d), which provides that “[a]pplications proposing the use of FM transmitting antennas in the immediate vicinity (i.e. 60 meters or less) of other FM or TV broadcast antennas must include a showing as to the expected effect, if any, of such approximate operation.”²² Three commenters support this proposal, one commenter (Cohen, Dippell, and Everist) supports the proposal with conditions, and one commenter, NAB, opposes it, as detailed below.²³ In the *NPRM*, we explained that this provision has been seldom, if ever, used as the basis for a Commission or Bureau action and that we were not aware of any industry complaints relying on section 73.316(d) during the more than 70 years this rule has been in effect.²⁴ We also tentatively concluded that, from a technical standpoint, broadcast radio antennas within

¹⁷ Section 73.316(c)(2)(ix)(B) applies to NCE FM applications for directional antennas and section 73.1690(c)(8)(i) relates to NCE FM applications for reduced operating power.

¹⁸ Read Comments at 1.

¹⁹ See 47 CFR § 73.315(a).

²⁰ 1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules, Second Report and Order, 15 FCC Rcd 21649, 21670, para. 42 (2000) (1998 Biennial Regulatory Review).

²¹ *Id.* NCE licensees are welcome to contact the Media Bureau if they have questions about how to calculate their specific coverage requirements.

²² See *NPRM* at 3; 47 CFR § 73.316(d). 47 CFR § 74.1235(h) requires that FM translators also comply with section 73.316(d).

²³ See Read Comments at 1; Schober Comments at 1; REC Comments at 2; Cohen, Dippell and Everist Comments at 2; Cohen, Dippell and Everist Reply Comments at 3.

²⁴ See *NPRM* at 3, para. 5; *Reorganization and Revision of Chapter*, 28 FR 13572, 13645 (1963); 47 CFR § 7.D (1945).

this physical proximity are unlikely to create interference problems if they are otherwise compliant with the FM transmission system requirements set out in section 73.317 of the rules.²⁵

9. In its comments, NAB objects to the elimination of this rule on the basis that doing so would weaken the Commission's "newcomer policy." Under this long-established policy, a newcomer (i.e., a party constructing a new or modified facility) is responsible, financially or otherwise, for eliminating objectionable interference to preexisting stations.²⁶ The policy has been applied to a variety of services, both broadcast and non-broadcast.²⁷ Section 73.316(d) is a codification of this policy as it applies to FM and TV antennas installed in close proximity.²⁸ Cohen, Dippell and Everist state that section 73.316(d) is no longer necessary as long as the newcomer policy is left in place.²⁹ Read comments that the rule has never been invoked and thus "clearly has no relevance to modern broadcasting."³⁰

10. In the FM service, the Commission has rarely—if ever—expressly relied on section 73.316(d) (or its predecessor rule sections) as a means of implementing the "newcomer policy" or addressing issues of proximity interference and intermodulation.³¹ However, NAB asserts that the rule helps prevent interference because it clarifies the responsibilities of broadcasters prior to and during the construction of new facilities.³² We find NAB's argument on this issue is persuasive. Other comments express cursory support for eliminating the rule but do not address the NAB's key concern (with the exception that Cohen, Dippell and Everist urges us to leave the "newcomer policy" in place if the rule is eliminated). Therefore, upon review of the record, we conclude that the rule provides useful guidance for broadcasters regarding their rights and obligations. We do not wish to introduce uncertainty or ambiguity into situations where it does not currently exist. Therefore, we leave section 73.316(d) in effect.

11. However, we take this opportunity to correct a typographical error in section 73.316(d) that was introduced in 1984, when the Commission converted the FM broadcast service rules to the metric system.³³ As part of this conversion, the Commission modified section 73.316(d) (then numbered section 73.316(e)) by replacing "200 feet" with "60 meters."³⁴ At the same time, without notice or

²⁵ See 47 CFR § 73.317.

²⁶ The "newcomer policy" dates back to *Midnight Sun Broadcasting Co.*, Memorandum Opinion and Order, 11 FCC 1119 (1947), in which the Commission held a broadcaster responsible for resolving interference caused by its new facilities to other preexisting facilities in close proximity. See, e.g., *Inquiry into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification*, Third Report and Order and Second Order on Reconsideration, 28 FCC Rcd 12555, 12557, para. 4 (2013) (*AM Directional Antenna Order*) (providing an overview of the history of the "newcomer policy").

²⁷ See, e.g., *AM Directional Antenna Order*, 28 FCC Rcd at 12557, para. 4, n.7.

²⁸ 47 CFR § 73.316(e), which the NPRM did not propose to modify, contains a separate codification of the newcomer policy with regard to new FM stations that might impact preexisting AM stations.

²⁹ Cohen, Dippell and Everist Reply Comments at 2 ("Section 73.316(d) is no longer necessary so long as the policy of the last station to be constructed that is in close proximity to other authorized and operating stations is first considered responsible in addressing any new interference issues").

³⁰ Read Comments at 1.

³¹ For example, in 1972, in response to a complaint involving FM proximity interference, the Commission applied by analogy the federal lands proximate interference rule in 47 CFR § 1.70 (since eliminated). See *Jack Straw Memorial Foundation*, Memorandum Opinion and Order, 35 FCC.2d 397, 399-400, paras. 8-11 (1972).

³² NAB Comments at 8-9.

³³ *Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments*, Report and Order, 94 FCC.2d 152, 182, paras. 84 and 198, App. C (1983).

³⁴ *Id.*, App. C.

discussion, the Commission replaced the word “proximate” with “approximate.”³⁵ We find that “proximate” is the more usual and appropriate term when discussing physical proximity, as here. Moreover, it was the term used in this rule prior to the 1984 metric conversion.³⁶ Lastly, it is consistent with the corresponding TV service rules, which retain the use of “proximate” in this same context.³⁷ For these reasons, we reinstate “proximate” instead of “approximate” in section 73.316(d).³⁸

D. NCE FM Class D Second-Adjacent Channel Interference Ratio

12. As proposed in the *NPRM*, we update the section 73.509(b) signal strength contour overlap requirements for NCE FM Class D stations to harmonize with the less restrictive section 73.509(a) contour overlap requirements applicable to all other NCE FM station classes.³⁹ Four commenters support this proposal and no commenters oppose it.⁴⁰ We agree with the commenters that the less restrictive requirements have proven effective for other station classes and that there is no reason to continue treating Class D stations differently in this context.⁴¹ When it modified section 73.509(a) in 2000 to specify a 100 dBu interfering contour for second-adjacent channel NCE FM stations, the Commission deferred including Class D NCE stations in order to accommodate the establishment of the LPFM service.⁴² Because the LPFM service is now mature, it is appropriate to extend the general contour overlap limits to Class D NCE stations. We anticipate that the less preclusive requirement will create opportunities for NCE stations to increase power and coverage, as well as provide them with greater site selection flexibility.⁴³ Accordingly, we amend section 73.509(b) as set out in Appendix B. In addition, to ensure clarity and consistency throughout this section and to conform to the publishing conventions of the

³⁵ *Id.*

³⁶ See, e.g., 47 CFR § 73.316(d) (1983).

³⁷ See 47 CFR §§ 73.625(b); 73.685(g).

³⁸ As an editorial, non-substantive change, with no change in meaning and no significance to the industry or general public, we conclude that notice and comment procedures for this change are “unnecessary” under the “good cause” exception of the Administrative Procedure Act (APA). 5 U.S.C. § 553(b)(B) (stating that the notice procedure does not apply “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest”); *Utility Solid Waste Activities Group v. EPA*, 236 F.3d 749, 755 (D.C. Cir. 2001) (explaining that the “unnecessary” exception of section 553(b)(B) applies “to those situations in which the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public”); *Amendment of Parts 1, 2, 15, 74, 78, 87, 90, and 97 of the Commission’s Rules Regarding Implementation of the Final Acts of the World Radiocommunication Conference (Geneva, 2007) (WRC-07), Other Allocation Issues, and Related Rules Updates*, Order, 27 FCC Red 14598, 14657, para. 158 (2012) (holding that there is no need for notice and comment rulemaking procedures when correcting various “grammatical, typographical, and display errors”).

³⁹ See *NPRM* at 3, para. 6. Section 73.509(b) provides that applications filed by NCE FM Class D station licensees will not be accepted if they propose overlap of the applicant station’s 80 dBu (interfering) contour with the 60 dBu (protected) contour of any second-adjacent channel station (i.e., a 20 dBu interference ratio). 47 CFR § 73.509(b). In contrast, section 73.509(a) provides that an application for a new or modified NCE FM station other than a Class D station will not be accepted if it proposes overlap of the applicant station’s 100 dBu (interfering) contour with the 60 dBu (protected) contour of any second-adjacent channel station (i.e., a less restrictive 40 dBu interference ratio). 47 CFR § 73.509(a); see generally, *1998 Biennial Regulatory Review*, 15 FCC Red at 21669, para. 39.

⁴⁰ See Read Comments at 1; Schober Comments at 1; REC Comments at 1-2; NAB Comments at 3.

⁴¹ See Read Comments at 1; NAB Comments at 3.

⁴² See *1998 Biennial Regulatory Review*, 15 FCC Red at 21671, paras. 44-45 (citing *Creation of a Low Power Radio Service*, Notice of Proposed Rule Making, 14 FCC Red 2471 (1999)).

⁴³ See REC Comments at 2.

National Archives and Records Administration's Office of the Federal Register, we make non-substantive and formatting edits to the table contained in section 73.509(a), as set out in Appendix B.⁴⁴

E. Protection for Grandfathered Common Carriers in Alaska in the 76-100 MHz Band

13. We adopt the proposal in the *NPRM* to eliminate four obsolete rule provisions⁴⁵ that require radio stations operating in the 76-100 MHz band to protect grandfathered common carrier services in Alaska.⁴⁶ Our licensing databases indicate that there are no common carrier services remaining in this band in Alaska. Four commenters support this change and none oppose it.⁴⁷ Therefore, we delete sections 73.501(b), 74.1202(b)(3), the second sentence of 74.702(a)(1), and the second sentence of 74.786(b) as unnecessary.

F. AM Fill-in Area Definition

14. As proposed in the *NPRM*,⁴⁸ we amend the definition of "AM fill-in area" set out in section 74.1201(j) of the rules to conform to the more recent definition in section 74.1201(g), which states that the "coverage contour of an FM translator rebroadcasting an AM radio broadcast station as its primary station must be contained within the *greater* of either the 2 mV/m daytime contour of the AM station or a 25-mile (40 km) radius centered at the AM transmitter site."⁴⁹ Currently, section 74.1201(j) refers to the *lesser* of these two distances. Five commenters support this change and no commenters oppose it.⁵⁰ NAB observes that, as it stands, section 74.1201(j) "may inadvertently prevent many AM stations from operating FM translators within their 2 mV/m contour."⁵¹ We agree. Accordingly, to create consistency across the relevant rules and eliminate any uncertainty regarding the definition of an AM fill-in area, we amend section 74.1201(j) to define an AM fill-in area as: "The area within the greater of the 2 mV/m daytime contour of the AM radio broadcast station being rebroadcast or a 25-mile (40 km) radius centered at the AM transmitter site." This change harmonizes the various rules governing fill-in translator transmitter siting and does not affect the signal coverage requirement set out in section 74.1201(g).

⁴⁴ Specifically, we number and re-title the tables by reference to the paragraphs they modify and replace "as set forth below" in the text of each rule with "as set forth in [the title of the table]." These rule changes are ministerial, non-substantive editorial revisions and we find good cause to conclude that notice and comment procedures are unnecessary and would not serve any useful purpose. See 5 U.S.C. § 553(b)(3)(B).

⁴⁵ See *NPRM* at 4, paras. 7-8. Specifically, section 73.501(b) applies to NCE FM stations in the reserved band, section 74.1202(b)(3) applies to FM translator stations on channels 201-260, section 74.702(a)(1) applies to low power TV and TV translator stations on Channels 5 and 6, and section 74.786(b) applies to digital low power TV and TV translator stations on Channels 5 and 6.

⁴⁶ *Amendment of Part 2 of the Commission's Rules Governing Frequency Allocations*, Report and Order, 90 F.C.C.2d 507, 509, para. 5 (1982). In 2005, the Commission deleted two similar rules (47 CFR §§ 73.220(b) and 73.603(b)) on the basis that there were no longer any common carrier stations in Alaska in the 76-100 MHz band. See *Amendment of Parts 2, 25, and 73 of the Commission's Rules to Implement Decisions from the World Radiocommunication Conference (Geneva, 2003) (WRC-03) Concerning Frequency Bands between 5900 kHz and 27.5 GHz and to Otherwise Update the Rules in this Frequency Range*, Report and Order, 20 FCC Rcd 6570, 6629, para. 165 (2005).

⁴⁷ See Read Comments at 1; Schober Comments at 1; REC Comments at 2; NAB Comments at 2-4.

⁴⁸ See *NPRM* at 4-5, para 9.

⁴⁹ 47 CFR § 74.1201(g) (emphasis added).

⁵⁰ See Read Comments at 1; Schober Comments at 1; REC Comments at 2; NAB Comments at 4; Cohen, Dippell and Everist Comments at 2-3; Cohen, Dippell and Everist Reply at 2.

⁵¹ NAB Comments at 4.

G. International Coordinations

15. We adopt the proposal in the *NPRM*⁵² to update sections 73.207(b) and 74.1235(d) to comport with the relevant terms of the *1992 U.S.-Mexico FM Broadcasting Agreement*⁵³ and the *1991 U.S.-Canada FM Broadcasting Agreement*, as amended.⁵⁴ Four commenters support the proposed changes and none oppose them, although NAB requests grandfathering for Class A stations that do not satisfy the revised spacing requirements, as discussed below.⁵⁵ In adopting this proposal, we address two technical clarifications requested by NAB: the treatment of Class C0 stations in section 73.207(b)(3) and the methodology to be used when calculating spacing distances under sections 73.207(b)(2) and (3). We also adopt the proposal in the *NPRM* that, for the purposes of section 73.207(b)(2), Class C0 allotments and assignments are considered to be Class C.⁵⁶

16. *Section 73.207(b) spacing requirements.* We update section 73.207(b), which contains minimum distance separations between U.S. and Mexican or Canadian FM stations, to reflect current treaty requirements. Regarding stations near the Canadian border, we update section 73.207(b)(2) and the associated table to reflect the spacing requirements set out in the 1997 amendment to the *1991 U.S. – Canada FM Broadcasting Agreement*⁵⁷ and reference the contour overlap provisions of section 5.2 of the *Agreement*.⁵⁸ NAB is concerned that the proposed updated requirements appear to impose greater minimum distance separations on Class A FM stations than is currently provided for in the Commission's existing rules.⁵⁹ It therefore urges that the Commission “confer ‘grandfathered short-spacing’ status on all U.S. stations that are operating as of the effective date of the new rules.”⁶⁰ Such “grandfathering” is not necessary. Although the Commission did not update the associated table to section 73.207(b)(2) to reflect these stricter distance separations at the time that the 1997 amendment took effect, the Commission coordinated with Canada Table B allotment modifications in accordance with the increase of Class A allotments to 6kW, and has subsequently applied the distance separations set out in the amended *1991*

⁵² See *NPRM* at 5-7, paras. 10-15.

⁵³ Agreement Between the Government of the United States of America and the Government of the United Mexican States Relating to the FM Broadcasting Service in the Band 88-108 MHz, Mex.-U.S., signed Aug. 11, 1992, entered into force June 2, 1995, T.I.A.S. 12474, <https://transition.fcc.gov/bureaus/ib/sand/agree/files/mex-bc/fmbc.pdf> (last visited June 15, 2021) (*1992 U.S.-Mexico FM Broadcasting Agreement*).

⁵⁴ Exchange of Notes Constituting a Working Arrangement for the Allotment and Assignment of FM Broadcasting Channels under the Agreement between the Government of Canada and the Government of the United States of America relating to the FM Broadcasting Service dated February 1991, Canada-U.S. effected by Exchange of Notes on November 26, 1990 and February 25, 1991, State Dept. Note No. 149, amended by Exchange of Notes on July 9, 1997, Canada-U.S., Canada Treaty Series 1997/22, superseded as implemented by the Transitional Arrangement Between the Federal Communications Commission and the National Telecommunications and Information Administration of the United States of America, of the First Part, and Innovation, Science and Economic Development Canada, of the Second Part, on the Provisional Application of the General Coordination Agreement between the United States of America and Canada on the Use of the Radio Frequency Spectrum by Terrestrial Radiocommunication Stations and Earth Stations, Canada-U.S., signed January 14 and January 28, 2021. <https://www.fcc.gov/broadcast-agreements-canada> (1991 U.S. – Canada FM Broadcasting Agreement and the 1997 Amendment to the 1991 U.S.-Canada FM Broadcasting Agreement, respectively).

⁵⁵ See Read Comments at 1; Schober Comments at 1; REC Comments at 2; NAB Comments at 2-7.

⁵⁶ See *NPRM*, App. B; NAB Comments at 6.

⁵⁷ See *1991 U.S.-Canada FM Broadcasting Agreement*, Section 2.4; *1997 Amendment to the 1991 U.S.-Canada FM Broadcasting Agreement*, para. 3 (amending Section 2.4).

⁵⁸ See *1991 U.S.-Canada FM Broadcasting Agreement*, Section 5.2; *1997 Amendment to the 1991 U.S.-Canada FM Broadcasting Agreement*, paras. 9-10 (amending Section 5.2).

⁵⁹ NAB Comments at 5-6.

⁶⁰ *Id.*

U.S. – Canada FM Broadcasting Agreement when processing applications for more than two decades.⁶¹ Consistent with the intent of this proceeding to provide rules that reflect current requirements, we clarify that no facility modifications will be ordered because of the administrative updates to the distance separation requirements and that any Class A FM station may continue to operate under its licensed parameters. However, any application to modify the technical parameters in the station’s license must include a showing that the proposed facilities satisfy the treaty requirements with respect to the Canadian border as set out in amended section 73.207(b)(2).⁶²

17. Regarding stations near the Mexican border, we update section 73.207(b)(3) and the associated table to reflect the spacing requirements set out in the *1992 U.S. – Mexico FM Broadcasting Agreement*.⁶³ At NAB’s suggestion, we clarify that, for the purposes of the table associated with section 73.207(b)(3), U.S. Class C0 assignments or allotments are considered Class C.⁶⁴ This revision reflects the existing definition of Class C set out in Annex 1, Section 1.1.2 of the *Agreement*.⁶⁵ We also adopt NAB’s suggestion that the distances in both sections 73.207(b)(2) and (3) are to be calculated using the distance calculation methodology set out in the two respective *Agreements*.⁶⁶ Finally, to ensure clarity and consistency throughout the spacing rules and conform to the publishing conventions of the National Archives and Records Administration’s Office of the Federal Register, we make non-substantive and formatting edits to all of the minimum distance separation tables contained in section 73.207(b), as set out in Appendix B.⁶⁷

18. *FM translator stations.* As proposed in the *NPRM*, we update section 74.1235(d) of the rules to eliminate inconsistent provisions and reflect current treaty requirements applicable to FM translators.⁶⁸ First, we delete all of the current introductory language of paragraph (d) prior to subsections (1), (2) and (3).⁶⁹ As noted in the *NPRM*, the first sentence of that introductory paragraph is inconsistent with the current treaty power limits established in the *1991 U.S.-Canada FM Broadcasting Agreement*, as amended, which are already codified in subsection (d)(3).⁷⁰ The remainder of that introductory paragraph is inconsistent with the terms of the *1992 U.S.-Mexico FM Broadcasting Agreement*, which specifies that

⁶¹ See 47 CFR § 73.1650.

⁶² Any such application would also be subject to the referral procedure set out in section 3.5.3 of the *1991 U.S.-Canada FM Broadcasting Agreement*.

⁶³ *1992 U.S.-Mexico Broadcasting Agreement*, Section 7.3.

⁶⁴ See NAB Comments at 6.

⁶⁵ Section 1.1.2 of the *1992 U.S.-Mexico Broadcasting Agreement* states that a station will be considered Class C if its protected contour is greater than that of a Class C1 allotment and less than or equal to that of a Class C allotment.

⁶⁶ See NAB Comments at 6-7.

⁶⁷ These formatting changes include numbering and re-titling the tables by reference to the paragraphs they modify, replacing hyphenated station relations (e.g. “A-A”) in the table to section 73.207(b)(2) with “to” (e.g., “A to A”) to match the other tables in the section, and updating internal cross-references to the renamed tables. We also amend the cross-references in section 73.507(c)(1) and (2) to reflect the updated table titles of section 73.207(b). As editorial, non-substantive changes, with no change in meaning and no significance to the industry or general public, we conclude that notice and comment procedures for these changes are “unnecessary” under the “good cause” exception of the Administrative Procedure Act (APA). See *supra* note 38.

⁶⁸ See *NPRM* at 6-7.

⁶⁹ In the *NPRM*, we proposed revising the introduction and deleting section 74.1235(d)(3). However, for formatting consistency between the Mexican and Canadian provisions, we retain (d)(3) as is and instead delete the conflicting introductory text.

⁷⁰ See *1991 U.S.-Canada FM Broadcasting Agreement*, Section 4.3; *U.S.-Canada FM Agreement Modified to Permit Added Flexibility for FM Translators in 97-22*, Public Notice, 13 FCC Rcd 4795 (July 28, 1997).

FM translator stations are subject to a contour overlap based spacing methodology⁷¹ and are thus not subject to the distance separations of section 73.207(b)(3). Finally, the reference in that paragraph to a 10-watt transmitter power output limitation is a superseded provision originally set out in the *U.S.-Mexican FM Broadcast Agreement* of 1972 and is no longer required under the current treaty. For these reasons, we delete all of the introductory language of section 74.1235(d) as obsolete. We retain sections 74.1235(d)(1) and (2), but adopt our proposed minor revisions to reflect the language of the *U.S.-Mexican FM Broadcast Agreement*. Because the relevant treaties do not distinguish between FM translator and booster stations, we find that it would be confusing to adopt our proposal in the *NPRM* to eliminate references to booster stations in section 74.1235(d), and decline to do so.⁷² Likewise, because we eliminate conflicting language in the first sentence of paragraph 74.1235(d), we do not revise paragraph 74.1235(d)(3), which concerns translator and booster stations near the Canadian border.

IV. PROCEDURAL MATTERS

19. *Paperwork Reduction Act Analysis.* This *Report and Order* does not contain proposed new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

20. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

21. *Final Regulatory Flexibility Certification.* As required by the Regulatory Flexibility Act of 1980 (RFA),⁷³ an Initial Regulatory Flexibility Certification was incorporated into the *NPRM*.⁷⁴ Pursuant to the Regulatory Flexibility Act of 1980, as amended,⁷⁵ the Commission’s Final Regulatory Flexibility Certification relating to this *Report and Order* is attached as Appendix C.

V. ORDERING CLAUSES

22. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 301, 303, 307, 308, 309, 316, and 319 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 301, 303, 307, 308, 309, 316, and 319, this *Report and Order* **IS ADOPTED** and **WILL BECOME EFFECTIVE** 30 days after publication in the Federal Register.

23. **IT IS FURTHER ORDERED** that Parts 73 and 74 of the Commission’s Rules **ARE AMENDED** as set forth in Appendix B and such rule amendments will become effective 30 days after publication in the Federal Register.

24. **IT IS FURTHER ORDERED** that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this *Report and Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

⁷¹ 1992 *U.S.-Mexico Broadcasting Agreement*, Section 3.1.

⁷² *See NPRM*, n.44.

⁷³ *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601, *et. seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

⁷⁴ *NPRM* at App B.

⁷⁵ *See* 5 U.S.C. § 604.

25. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

26. **IT IS FURTHER ORDERED** that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 21-263 **SHALL BE TERMINATED** and its docket **CLOSED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A
List of Commenters

Commenters

Aaron Read
Cohen, Dippell and Everist, P.C.
Edward A Schober, PE/ Radiotechniques Engineering, LLC
National Association of Broadcasters
REC Networks

Reply Commenters

Cohen, Dippell and Everist, P.C.
REC Networks

APPENDIX B**Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR chapter 1, parts 73 and 74 as follows:

PART 73 – RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

2. Amend § 73.207 by revising the first sentence of the introductory text of paragraph (b) and paragraphs (b)(1), (2) and (3) to read as follows:

§ 73.207 Minimum distance separation between stations.

* * * * *

(b) The distances listed in Tables 1, 2, and 3 apply to allotments and assignments on the same channel and each of five pairs of adjacent channels. * * *

(1) *Domestic distance separation.* Domestic allotments and assignments must be separated from each other by not less than the distances in Table 1 to this paragraph (b):

Table 1 to paragraph (b)—Minimum Distance Separation Requirements in Kilometers (Miles)				
Relation	Co-Channel	200 kHz	400/600 kHz	10.6/10.8 MHz (I.F.)
* * * * *				

(2) *Canadian border distance separation.* Under the 1991 United States-Canada FM Broadcasting Agreement, as amended, any domestic U.S. allotment or assignment within 320 kilometers (199 miles) of the common border must either satisfy the contour overlap provisions set out in the Agreement or be separated from Canadian allotments and assignments by not less than the distance given in Table 2 to this paragraph (b), using the distance calculation methodology set out in the Agreement. When applying Table 2, U.S. Class C0 allotments and assignments are considered to be Class C; U.S. Class C2 allotments and assignments are considered to be Class B; and U.S. Class C3 allotments and assignments are considered to be Class B1.

Table 2 to paragraph (b)—Minimum Distance Separation Requirements in Kilometers (Canada)					
Relation	Co-Channel	200 kHz	400 kHz	600 kHz	10.6/10.8 MHz (I.F.)
A1 to A1	78	45	24	20	4
A1 to A	131	78	44	40	7
A1 to B1	164	98	57	53	9
A1 to B	190	117	71	67	12
A1 to C1	223	148	92	88	19
A1 to C	227	162	103	99	26
A to A	151	98	51	42	10
A to B1	184	119	64	55	12
A to B	210	137	78	69	15
A to C1	243	168	99	90	22
A to C	247	182	110	101	29
B1 to B1	197	131	70	57	24
B1 to B	223	149	84	71	24
B1 to C1	256	181	108	92	40
B1 to C	259	195	116	103	40
B to B	237	164	94	74	24
B to C1	271	195	115	95	40
B to C	274	209	125	106	40
C1 to C1	292	217	134	101	48
C1 to C	302	230	144	111	48
C to C	306	241	153	113	48

(3) *Mexican border distance separation.* Under the 1992 United States – Mexico FM Broadcasting Agreement, any domestic U.S. assignment or allotment within 320 kilometers (199 miles) of the common

border must either satisfy the contour overlap provisions set out in section 7.3 of the Agreement or be separated from Mexican assignments or allotments by not less than the distances given in Table 3 to this paragraph (b), using the distance calculation methodology set out in the Agreement. The minimum required distance separation between I.F. allotments and assignments cannot be reduced. When applying Table 3—

* * * * *

- (iv) U.S. Class C2 assignments or allotments are considered Class B;
- (v) Class C1 assignments or allotments assume maximum facilities of 100 kW ERP at 300 meters HAAT. However, U.S. Class C1 stations may not, in any event, exceed the domestic U.S. limit of 100 kW ERP at 299 meters HAAT, or the equivalent; and
- (vi) U.S. Class C0 assignments or allotments are considered Class C.

Table 3 to paragraph (b)—Minimum Distance Separation Requirements in Kilometers (Mexico)				
Relation	Co-Channel	200 kHz	400/600 kHz	10.6/10.8 MHz (I.F.)
* * * * *				

3. Amend § 73.316 by revising the second sentence of (c)(2)(ix)(B) and paragraph (d) to read as follows:

§ 73.316 FM antenna systems.

* * * * *

(c) * * *

(2) * * *

(ix) * * *

(B) * * * The application for license must also demonstrate that coverage of the community of license by the 70 dBu contour is maintained for stations authorized pursuant to § 73.215 on Channels 221 through 300, as required by § 73.315(a), while noncommercial educational stations operating on Channels 201

through 220 must show that the proposed transmitter location will provide a minimum field strength of 1 mV/m (60 dBu) over at least 50 percent of its community of license or reach 50 percent of the population within the community.

(d) Applications proposing the use of FM transmitting antennas in the immediate vicinity (i.e. 60 meters or less) of other FM or TV broadcast antennas must include a showing as to the expected effect, if any, of such proximate operation.

* * * * *

§ 73.501 [Amended]

4. Amend § 73.501 by removing and reserving paragraph (b).
5. Amend § 73.507 by revising paragraphs (c)(1) and (c)(2) to read as follows:

§ 73.507 Minimum distance separations between stations.

* * * * *

(c)(1) Stations separated in frequency by 10.6 or 10.8 MHz (53 or 54 channels) from allotments or assignments on non-reserved channels will not be authorized unless they conform to the separations in Table 1 given in § 73.207.

(2) Under the United States–Mexican FM Broadcasting Agreement, for stations and assignments differing in frequency by 10.6 to 10.8 MHz (53 or 54 channels), U.S. noncommercial educational FM allotments and assignments must meet the separations given in Table 3 of § 73.207 to Mexican allotments or assignments in the border area.

6. Amend § 73.509 by revising paragraphs (a) and (b) to read as follows:

§ 73.509 Prohibited overlap.

(a) An application for a new or modified NCE–FM station other than a Class D (secondary) station will not be accepted if the proposed operation would involve overlap of signal strength contours with any other station licensed by the Commission and operating in the reserved band (Channels 200–220, inclusive) as set forth in Table 1 to this paragraph (a):

Table 1 to paragraph (a)		
Frequency separation	Contour of proposed station	Contour of any other station
* * * * *		

(b) An application by a Class D (secondary) station, other than an application to change class, will not be accepted if the proposed operation would involve overlap of signal strength contours with any other station as set forth in Table 2 to this paragraph (b):

Table 2 to paragraph (b)		
Frequency separation	Contour of proposed station	Contour of any other station
Co-channel	0.1 mV/m (40 dBu)	1 mV/m (60 dBu).
200 kHz	0.5 mV/m (54 dBu)	1 mV/m (60 dBu).
400/600 kHz	100 mV/m (100 dBu)	1 mV/m (60 dBu).

7. Amend § 73.1665 by revising paragraph (b) and removing Table 1 to paragraph (b) to read as follows:

§ 73.1665 Main transmitters.

* * * * *

(b) There is no maximum manufacturer-rated power limit for AM, FM, TV or Class A TV station transmitters.

* * * * *

8. Amend § 73.1690 by revising the second sentence of paragraph (c)(8)(i) to read as follows:

§ 73.1690 Modification of transmission systems.

* * * * *

(c) * * *

(8) * * *

(i) * * * Noncommercial educational FM stations must continue to provide a 60 dBu contour over at least 50 percent of its community of license or reach 50 percent of the population within the community. * * *

* * * * *

**PART 74 – EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER
PROGRAM DISTRIBUTIONAL SERVICES**

9. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336 and 554.

§ 74.702 [Amended]

10. Amend § 74.702 by removing the second sentence of paragraph (a)(1).

§ 74.786 [Amended]

11. Amend § 74.786 by removing the second sentence of paragraph (b).

12. Amend § 74.1201 by revising paragraph (j) to read as follows:

§ 74.1201 Definitions.

* * * * *

(j) *AM Fill-in area.* The area within the greater of the 2 mV/m daytime contour of the AM radio broadcast station being rebroadcast or a 25-mile (40 km) radius centered at the AM transmitter site.

* * * * *

§ 74.1202 [Amended]

13. Amend § 74.1202 by removing paragraph (b)(3).

14. Amend § 74.1235 by revising paragraph (d) as follows:

§ 74.1235 Power limitations and antenna systems.

* * * * *

(d)(1) Translator or booster stations located within 125 kilometers of the Mexican border may not exceed an ERP of 50 watts (0.050 kW) in the direction of the Mexican border. Such stations also may not produce an interfering contour in excess of 32 km from the transmitter site in the direction of the Mexican border, nor may the 60 dBu service contour exceed 8.7 km from the transmitter site in the direction of the

Mexican border.

(2) Translator or booster stations located between 125 kilometers and 320 kilometers from the Mexican border may operate with an ERP in excess of 50 watts. * * *

(3) * * *

APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making (NPRM)* to this proceeding.² The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The Commission received no comments on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need For, and Objectives of, the Report and Order

2. This *Report and Order* adopts several rule changes to better reflect current requirements and eliminate redundant, outdated, or conflicting provisions. Specifically, the Commission:

- Eliminates the maximum rated transmitter power limit rule for AM stations. The Commission finds that an equipment limitation on potential transmitter power that is established by the transmitter manufacturer is outdated and unnecessary given the Commission's current reliance on actual operating antenna input power as the most accurate and effective means of ensuring that AM stations adhere to their authorized power limits.⁴
- Updates several rule provisions containing an obsolete noncommercial educational (NCE) FM community of license coverage standard to harmonize with the later-adopted, more specific, NCE community of license coverage requirement.⁵
- Updates the signal strength contour overlap requirements for NCE FM Class D stations to harmonize with the contour overlap requirements for all other classes of NCE FM stations. The Commission concludes that there is no reason to continue treating Class D stations differently in this context and that a less preclusive standard will create opportunities for NCE stations to increase power and coverage, as well as provide them with greater site selection flexibility.⁶
- Eliminates the requirement for radio broadcast services to protect grandfathered common carrier services in Alaska operating in the 76-100 MHz frequency band. This requirement is no longer necessary as there are no more common carriers in this band in Alaska.⁷
- Harmonizes the definition of an "AM fill-in area" set out in multiple rule sections. This correction applies the most up-to-date definition of "AM fill-in area" consistently across the relevant rules.⁸
- Amends regulations applicable to broadcast stations within 320 kilometers of the Mexican and Canadian borders to implement the most current treaty provisions.⁹

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (CWAAA).

² *Updating Broadcast Radio Technical Rules*, Notice of Proposed Rulemaking, FCC 21-84 (July 12, 2021).

³ See 5 U.S.C. § 604.

⁴ See *supra* para. 5.

⁵ See *supra* para. 6.

⁶ See *supra* para. 12.

⁷ See *supra* para. 13.

⁸ See *supra* para. 14.

⁹ See *supra* para. 15-18.

3. Amending these rules to accurately reflect current requirements will reduce potential confusion and eliminate unnecessary burdens on broadcasters.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments to the IRFA filed.

C. Response to comments by the Chief Counsel for Advocacy of the Small Business Administration

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.¹⁰ The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Apply

6. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein.¹¹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”¹² In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹³ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹⁴

7. *Radio Stations.* Radio stations are an Economic Census category that “comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.”¹⁵ The SBA has established a small business size standard for this category as firms having \$41.5 million or less in annual receipts.¹⁶ Economic Census data for 2012 shows that 2,849 radio station firms operated during that year.¹⁷ Of that number, 2,806 operated with annual receipts of less than \$25 million per year, and 43 firms had annual receipts of \$25 million or more.¹⁸ Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded \$41.5 million

¹⁰ 5 U.S.C. § 604(a)(3).

¹¹ *Id.* § 603(b)(3).

¹² *Id.* § 601(6).

¹³ *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

¹⁴ 15 U.S.C. § 632.

¹⁵ U.S. Census Bureau, 2012 NAICS Definitions, “515112 Radio Stations,” <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515112&search=2017+NAICS+Search&search=2017>.

¹⁶ 13 CFR § 121.201, NAICS code 515112 Radio Stations.

¹⁷ U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515112 Radio Stations) https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4/naics~515112/515120.

¹⁸ *Id.*

in that year, we conclude that the majority of radio broadcast stations were small entities under the applicable SBA size standard.

8. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial AM stations to be 4,509 and the number of commercial FM stations to be 6,676 for a total of 11,185, along with 8,866 FM translator and booster stations.¹⁹ According to BIA/Kelsey Publications, Inc.'s Media Access Pro Database, as of March 2020, 4,389 AM stations and 6,767 FM stations had revenues of \$41.5 million or less. In addition, the Commission has estimated the number of noncommercial educational FM radio stations to be 4,204.²⁰ NCE stations are non-profit, and therefore considered to be small entities. Accordingly, we estimate that the majority of radio broadcast stations are small entities. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations²¹ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

9. Moreover, as noted above, an element of the definition of "small business" is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also, as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

E. Description of Projected Reporting, Record Keeping and Other Compliance Requirements

10. The rule changes adopted in the *Report and Order* do not include any notification or recordkeeping requirements.

F. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

11. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²²

12. The rules adopted or amended in the *Report and Order* do not impose any new substantive requirements on broadcast radio stations. Rather, they clarify existing technical requirements, create consistency across different rules, and ensure that current treaty terms are accurately reflected in the rules. These measures will help small entities by reducing their need to rely on third parties, such as legal counsel, to understand the rules and comply with regulatory requirements. Significant alternatives would include leaving the rules as they are; however, in the Commission's judgment the increased

¹⁹ *Broadcast Station Totals as of December 31, 2021*, Public Notice, DA 22-2 (rel. Jan. 4, 2022) (*Broadcast Station Totals*), <https://www.fcc.gov/document/broadcast-station-totals-december-31-2021>.

²⁰ *Id.*

²¹ "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both." 13 CFR § 121.103(a)(1).

²² 5 U.S.C. § 603(c)(1)-(c)(4).

transparency and certainty under the amended rules would outweigh any benefit of familiarity with the existing rules. The Commission did take this alternative approach when it decided to retain the proximate interference rule set out in section 73.316(d), responding to industry feedback that that rule serves a useful purpose.

G. Report to Congress

13. The Commission will send a copy of this Report and Order, including this FRFA, in a report to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.²³ In addition, the Commission will send a copy of the Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.²⁴

²³ See *id.* § 801(a)(1)(A).

²⁴ See *id.* § 604(b).